Office - Supreme Court, U.S.
FILED
DEC 5 1983
ALEXANDER L. STEVAS,
CLERK

NO. 83-745
NO. 83-746

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JULIAN I. RICHARDS,

Petitioner,

vs.

HOWARD UNIVERSITY, a Corporation,
and
PATRICIA P. HAMILTON, Personal Representative
of the Estate of John L. Hamilton, deceased

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF RESPONDENT HOWARD UNIVERSITY IN OPPOSITION

RUBY DIANE WYATT
2900 Van Ness Street, N. W.
Washington, D. C. 20008

Counsel for Respondent,
Howard University

CLB PUBLISHERS & LITHOGRAPHERS, INC. • (301) 933-5220

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

NO. 83-745
NO. 83-746

JULIAN I. RICHARDS,

Petitioner,

vs.

HOWARD UNIVERSITY, a Corporation,
and
PATRICIA P. HAMILTON, Personal Representative
of the Estate of John L. Hamilton, deceased

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF RESPONDENT HOWARD UNIVERSITY IN OPPOSITION

TABLE OF CONTENTS

Page

STATEMENT 1
ARGUMENT 4
CONCLUSION 8
APPENDIX 1a

TABLE OF AUTHORITIES

Page

Dupree v. Jefferson,
666 F.2d 606 (1981) 5

Hagans Management Co., Inc. v. Nichols,
409 A.2d 179 (1979) 5

Henderson v. Snider Bros., Inc.,
439 A.2d 481 (1981) 5

In Re Edith A. Parsons,
328 A.2d 383 (1974) 1,3,4,6,7

Internal Revenue v. Sunnen,
333 U.S. 591, 68 S. Ct. 715, 92 L. Ed. 893 (1947) 5

Mazaleski v. Harris,
481 F.Supp. 696 (1976) 5

Montana v. United States,
440 U.S. 147 (1979) 6

Semler v. Psychiatric Institute of Washington, D.C., Inc.,
575 F.2d 922 (1978) 5

Thornton v. Little Sisters of the Poor,
380 A.2d 593 (1974) 5

United States v. Epstein,
608 F.2d 1 (1979) 5

STATUTES

District of Columbia Court Reform and Criminal Procedure Act of 1970 2

District of Columbia Code §20-1106 (1973 ed.) 3

28 United States Code §2001 7

STATEMENT

Petitioner brought suit in the Superior Court of the District of Columbia and the District Court to "remove a cloud and quiet title" to real property located in the District of Columbia to which he claims a one-sixth undivided interest. He once again is seeking review of the administration of his aunt's estate and judicial sale of the subject property.

The facts relevant herein, which initiated this spate of lawsuits and appeals were set out by Judge Nebeker in the Appeals opinion in *In re Edith A. Parsons,* 328 A.2d 383 (D. C. App. 1974)[1] as follows:

> "In August 1971, Richards petitioned the United States District Court to be appointed conservator of the estate of his aunt, Edith A. Parsons.[1] In September, 1971, the court appointed another individual to be the conservator.
>
> The estate included a one-half interest in an apartment house valued in excess of $190,000. The proposed sale of that property precipitated the instant case as well as two previous appeals. During the summer of 1972, the conservator was informed by the trustee of an estate holding the other one-half interest in the apartment house that he intended to sell the trust interest and that if necessary he would seek partition. The conservator entered into negotiations for the sale of the property rather than have a judicial partition of it. The conservator sought consent for the sale from Richards and his two sisters. Only Richards objected. The trial court held a hearing on October 20, 1972, to air Richards' objec-

[1]District of Columbia Court of Appeals Case No. 7831 brought by Julian I. Richards, Appellant herein, appealing an order of Superior Court dated October 20, 1972, confirming a conservator's sale of the subject property.

tions which included, along with certain irrelevancies, concern over the loss of rental income. The trial court, perceiving the issue to be what would be in the best interest of the ward and the ward's estate found

> 'that it is in the best interest of the estate of the ward, and of the ward individually, that the conservator be permitted to proceed to the private sale of the real estate in question . . .'

The Court then ordered the conservator to proceed with a private sale of the one-half interest. (Emphasis added.).

---

[1]Jurisdiction over this action was subsequently transferred to the Superior Court pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970 . . ." Id. at 384.

The remaining interest in this property was owned by the estate of H. B. Smithy, the trustee of which is American Security and Trust Company. In August, 1972 a contract was entered into by Howard University as buyer and American Security and Trust Company (trustee) as seller whereby Howard Manor Apartments (subject property) would be sold to Howard University. John Eris Powell as conservator for Edith A. Parsons submitted the contract for approval to the Superior Court of the District of Columbia in the above referenced Order Nisi proceeding (C. A. 1600-71).

Subsequent to the Order Nisi having been entered on the 15th day of December, 1972, having been duly published and no cause having been shown why the contract for the sale of the said one-half interest to Howard University, Inc. should not be ratified and no offer having been made which guaranteed at least a ten (10%) percent net increase over the price specified in the contract, the Order Nisi was entered by the Court on January 12, 1973 ratifying and confirming the sale

as set forth by the terms of the aforesaid contract.

Edith Parsons died on February 19, 1973 prior to the completion of the sale and plaintiff claims that his 1/6 interest vested at that time but acknowledges the District of Columbia's ancillary administration of his aunt's estate which subjected his vested title to possible divestiture under D. C. Code §20-1106 (1973 ed.).

On March 4, 1974, John L. Hamilton, deceased, in his capacity as ancillary administrator d.b.n., c.t.a. of plaintiff's aunt's estate, petitioned the Probate Division of the Superior Court of the District of Columbia for authority to execute a deed to complete a judicial sales contract arising out of a property conservatorship proceeding of the estate, C.A. 1600-71 in the Superior Court. Such authority was granted by Judgment Order of the Probate Division of Superior Court dated May 7, 1974, and Petitioner's aunt's 1/2 undivided interest in the Howard Manor Apartments was conveyed to the defendant, Howard University. The deed, which had been executed by John L. Hamilton, deceased, pursuant to the Judgment Order of May 7, 1974, was recorded on May 15, 1974.

Thereafter, plaintiff appealed the Judgment Order of the Superior Court to the District of Columbia Court of Appeals, Case No. 7831. The third in a series of appeals challenging the procedure leading to the sale of real property during the administration of his aunt's estate. This appeal was dismissed. See *In re Parsons,* 328 A.2d 383 (1974) rehearing denied by order entered December 16, 1974. (See A 1). This decision was appealed to the Supreme Court. (See A 2). The appeal was dismissed and certiorari was denied. (See A 3).

Now over seven years later two lawsuits on the same issues were brought, one in the Superior Court of the District of

Columbia and in the United States District Court for the District of Columbia. Each of which were dismissed on the basis of res judicata. (See petitioner's brief U.S.C.A. A1-6 and petitioner's brief DCA, A13-16).

ARGUMENT

The petitioner in this case presents only one question - one that does not warrant review on certiorari. Petitioner makes a vigorous attempt to persuade the Court to grant his petition on the basis of substantial federal question, i.e. deprivation of his fifth and fourteenth amendment constitutional rights asserting that property was taken from him without due process.

However, petitioner was afforded all due process rights to which he was entitled; he made objections and appearances to the Court as follows:

1. Petitioner refused to give conservator consent for the sale, see *In Re Edith A. Parsons, supra.*
2. Petitioner appeared at a Court hearing on October 20, 1972 to "air" his objections to the sale, Id. at 384.
3. Petitioner made general objections to sale decision at a hearing on December 15, 1972, Id. at 384.
4. Petitioner also filed two appeals from the trial court's actions. Said appeals were dismissed for *lack of prosecution* (emphasis supplied). Id. at 384.

Petitioner's failure to prosecute in the last instance was failure on his own part to exercise his due process rights.

Moreover, petitioner, approximately eight years ago litigated his case to the highest court of the District of Columbia and to the highest court in the land and was denied a writ of certiorari at that time. He is bound by the decisions of those

courts on his prior appeals. The doctrine of *Res Judicata* applies to bar and preclude appellant from bringing a subsequent action on issues previously raised or adjudicated. *United States v. Epstein,* 608 F.2d 1, 2 (D. C. Cir. 1979).

It is well settled that once a claim or cause of action has been presented for adjudication and a valid and final judgment on the merits is rendered, the same claim or cause of action cannot be asserted in a subsequent lawsuit. *Semler v. Psychiatric Institute of Washington, D. C., Inc.,* 575 F.2d 922 (D. C. Cir. 1978); *Hagans Management co., Inc. v. Nichols,* 409 A.2d 179 (D. C. App. 1979); *Thornton v. Little Sisters of the Poor,* 380 A.2d 593 (D. C. App. 1974).[2] *Res Judicata* operates as a direct estoppel to completely and absolutely bar subsequent actions based on the same claim or demand between the same parties. *Henderson v. Snider Bros., Inc.,* 439 A.2d 481, 485 (D. C. App. 1981); *Thornton v. Little Sisters of the Poor, supra,* at 595.

The Supreme Court set out the doctrine in Commissioner of *Internal Revenue v. Sunnen,* 333 U.S. 591, 68 S. Ct. 715, 92 L. Ed. 893 (1947) as follows:

> "The general rule of res judicata applies to repetitious suits involving the same cause of action. It rests upon considerations of economy of judicial time and public policy favoring the establishment of certainty in legal relations. The rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and

[2]A judgment is final if it could not become affected by further proceedings in the court in which it was rendered. *Mazaleski v. Harris,* 481 F. Supp. 696, 698 (D.D.C. 1979). Furthermore, a dismissal with prejudice operates as an adjudication on the merits and thus, operates to bar a subsequent action. *Dupree v. Jefferson,* 666 F.2d 606, 610, n.25 (D. C. Cir. 1981).

their privies are thereafter bound 'not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' *Cromwell v. County of Sac,* 94 U.S. 351, 352, 24 L. Ed., 195. The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. See on Moschzisker, 'Res Judica', 38 Yale L. J. 299; Restatement of the Law of Judgment, § § 47, 48."

Petitioner relies on *Montana v. United States,* 440 U. S. 147 (1979), quoting "headnote 8A" for the proposition that "redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedure followed in prior litigation". (See USCA petition of petitioner, p. 15).

A review of *In re Parsons, supra,* reveals that petitioner's original appeal in 1973 (No. 7128, Consolidated with No. 7225) from the order permitting the sale of the property was dismissed for lack of prosecution. Id. at 384. Petitioner raised the issue of lack of authority of the Superior Court of the District of Columbia to effectuate the subsequent sale confirmation in a third appeal from a subsequent confirmation order, which was also dismissed in *In re Parsons* on the grounds of res judicata.

Petitioner further argues that the Superior Court had no jurisdiction to make the confirmation order initially. Judge Nebeker, in discussing the jurisdictional issue, in *In re Parsons, supra* which petitioner raised in that case, stated:

"Our first concern is whether the dismissal of the appeal in No. 7225, thus making final the confirmation order, precludes further litigation on the issue appellant is presently raising. Authority for a conservator to sell real prop-

> erty is contained in Superior Court Civil Rule 308. Most notably, the rule states that, unless otherwise provided, sale of real property is to be governed by 28 U. S. C. §2001 and Superior Court Civil Rule 308 reveal that the *final judicial step leading to a private sale is court approval through confirmation. Subsequent to that confirmation the parties are committed to complete the transaction.* (Citations omitted) . . ." Id. at 385.

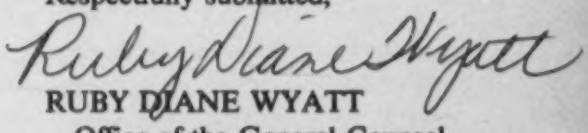
Petitioner refers to yet another appeal (No. 9672) from the Superior Court judgment order dated January 26, 1976, in re final order approving the account of the ancillary administrator, John Hamilton. As pointed out by Judge Nebeker in *In re Parsons, supra,* Petitioner did not challenge the report or statement after receiving a copy of an order ratifying the report and directing that the statement be made, Id. at 384-385.

Petitioner admits to notice in March, 1974 of the ancillary administrator's petition for authority to execute the deed and to convey the property. (Record Excerpts from the United States District Court for the District of Columbia Case No. 82-1854), but failed to raise any issue as to the validity of the sale of the property at that time and before the Superior Court of the District of Columbia Probate Division entered an order on May 7, 1974 approving the conveyance. He, likewise, failed to raise any issue as to the jurisdiction of the Superior Court in issuing the judgment order dated May 7, 1974. His failure to do so resulted in the dismissal of his appeals by the District of Columbia Court of Appeals on the ground of *res judicata.*

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court deny the petition.

Respectfully submitted,



RUBY DIANE WYATT
Office of the General Counsel
Howard University
2900 Van Ness Street, N.W.
Washington, D.C. 20059

Counsel for Respondent

APPENDIX A

ORDER DENYING REHEARING PETITION
DISTRICT OF COLUMBIA
COURT OF APPEALS
Filed December 16, 1974

NO. 7831 JANUARY TERM, 1974

IN RE:

EDITH A. PARSONS,
A Conservatorship

JULIAN I. RICHARDS,
Appellant.

CA 1600 – 71

BEFORE: Nebeker, Yeagley and Harris, Associate Judges.

ORDER

On consideration of appellant's "Petition for Rehearing", it is

ORDERED that appellant's aforesaid petition is denied.

PER CURIAM.

Copies to:

DISTRICT OF COLUMBIA
COURT OF APPEALS
Filed January 22, 1975

NO. 7831 January Term 1975

In Re:

Edith A. Parson,
A Conservatorship

Julian I. Richards,
Apellant.

CA 1600-71

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given to the court possessed of the record that Julian I. Richards, the Appellant above named hereby appeals to the Supreme Court of the United States from the final judgment of the District of Columbia Court of Appeals in Case No. 7831, entered in this action on November 13, 1974, the mandate on which was issued to the Superior Court of the District of Columbia on December 24, 1974.

This appeal is taken pursuant to Title 28 United States Code 1257(2) providing that:

> Final Judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity.

And, pursuant to Title 11-101 of the District of Columbia Code, 1967 Edition, Supplement V (1972); and, by reason of the statutes, contained in Title 11 and Title 21 of the District of Columbia Code, 1967 Edition, Supplements IV and V, and the 1973 edition, in force and effect during the proceeding known as CA 1600-71, as designated by the Superior Court of the District of Columbia, as they pertain to a conservatorship of property proceeding.

Experiencing difficulty obtaining counsel to represent him in this matter, in part due to his financial condition, but with the determined intention so to do, the appellant hereby seeks to reserve unto himself without prejudice, his privilege to petition to the Supreme Court for a review on writ of certiorari all of the matters regarding the estate of Edith A. Parsons now pending, or a matter of record, in the District of Columbia Court of Appeals; the Superior Court of the District of Columbia; the Circuit Court of Virginia Beach, State of Virginia; the Circuit Court of Montgomery County, State of Maryland; the Special Court of Appeals, State of Maryland and/or the Court of Appeals, State of Maryland.

Certificate of Service

I hereby certify that a copy of the foregoing notice will be mailed, certified mail, showing address where delivered on the requested return receipt pursuant to Rules 10 and 33 of the Supreme Court of the United States, by depositing the notice in a United States post office, with first class postage prepaid, addressed to counsel of record at their post office addresses, and, addressed to all parties required to be served, in the same manner and evidenced by the same proof, id est, signed certified mail receipt.

/s/ Julian I. Richards.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543
October 6, 1975

Julian I. Richards, Esq.
109 Bay Colony Drive
PO Box 692
Virginia Beach, Va. 23451

RE: **RICHARDS v. RICHARDS, ET AL.,**
74-1501

Dear Sir:

The Court today entered the following order in the above-entitled case:

The appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.

cc:

Very truly yours,

Michael Rodak, Jr., Clerk

/s/ Helen Taylor
Helen Taylor (Mrs.)
Assistant Clerk